IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 180 OF 2005

Shivaji Mahadu Chavan & ors. ... Appellants.
Versus.
Namdeo Babruwahan Chavan & ors. ... Respondents.

Shri S.S.Patwardhan for the Appellants.

Shri Vijay Bhate i/by Shri P.P.Chavan for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 13th April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Appellants are the unsuccessful Plaintiffs in a suit for specific performance. The trial Court decreed the suit. The Appellate Court has set aside the decree and has substituted the same by a decree for refund of earnest amount along with interest.

2. Shri Patwardhan appearing for the Appellants submitted that the only ground on which the Appellate Court has reversed the decree passed by the trial Court is that the suit for specific performance was not filed during the lifetime of the vendor Baburwan. He submitted that once the legal necessity for execution of the agreement by the deceased vendor was established and payment of earnest money was accepted, the Appellate Court ought not to have disturbed the decree for specific performance.

3. I have considered the submissions. It is to be noted here that the agreement is of the year 1974 and the suit is filed for specific performance in the year 1984. It is in this context of delay that the Appellate Court has noted that the suit was not filed during the lifetime of the vendor. The Appellate Court has considered various circumstances such as purpose for which the suit agreement was executed. After consideration of various factors, the Appellate Court has exercised its discretion under section 20 of the Specific Relief Act, 1963 against the original Plaintiff, which exercise is based on the factors which are relevant for the said purpose. In the circumstances no interference can be made. No substantial question of law arises and the Second Appeal is dismissed with no order as to costs.

Judge.